

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

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CHURCH OF SCIENTOLOGY OF CALIFORNIA,	:	No. B 025920
and MARY SUE HUBBARD,	:	
	:	Super. Ct. No.
Appellants,	:	C 420153
- against -	:	
GERALD ARMSTRONG,	:	MOTION TO DISPENSE WITH
	:	FILING OF NEW BRIEFS
	:	AND ORAL ARGUMENT, AND
	:	FOR CONSIDERATION AND
Respondent.	:	RENDERING OF DECISION
	:	BASED ON BRIEFS AND ORAL
	:	<u>ARGUMENT IN PRIOR APPEAL</u>
-----X		

APPELLANTS HEREBY MOVE that this Court render decision on the merits of this appeal on the basis of the full briefing and oral argument already conducted in the prior appeal in case no. B005912, otherwise identically captioned. This Court dismissed that prior appeal on the grounds that the judgment appealed from would not be a final judgment until the trial court's disposition of respondent's cross-complaint. The trial court disposed of that cross-complaint on December 11, 1986, and appellants took the instant appeal. As set forth in the accompanying affidavit, while the trial court's disposition of respondent's cross-complaint rendered moot the equitable issues raised by appellants in their initial appeal, it in no way alters the issues with respect to their claims for damages, also

raised by appellants in their initial appeal. Appellants therefore request that the Court render decision on those remaining issues, without further briefing and oral argument.

Dated: February 27, 1987


Respectfully submitted,

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Counsel for Appellants

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

-----X	:	No. B 025920
CHURCH OF SCIENTOLOGY OF CALIFORNIA,	:	
and MARY SUE HUBBARD,	:	Super. Ct. No.
	:	C 420153
Appellants,	:	
	:	AFFIDAVIT IN SUPPORT
- against -	:	<u>OF MOTION</u>
	:	
GERALD ARMSTRONG,	:	
	:	
Respondent.	:	
-----X	:	

STATE OF NEW YORK)
) s.:
COUNTY OF NEW YORK)

ERIC M. LIEBERMAN, being duly sworn, deposes and says:

1. I am counsel for appellant Church of Scientology of California and appellant Mary Sue Hubbard.

2. Appellants move that this Court render a decision on the merits of this appeal on the basis of the full briefing and oral argument already conducted in the prior appeal in Case No. B005912, otherwise identically captioned. Appellants have filed no previous motion for this relief. Good cause for granting this request is set forth in the following paragraphs.

3. Plaintiff-appellant Church initiated this action on August 2, 1982, against defendant, a former church archivist. The Church's complaint alleged that defendant wrongfully appropriated and misused private Church archival documents, and sought damages, return of the documents, and a permanent

injunction against further misuse of the documents. On August 24, 1982, the Superior Court issued a temporary restraining order -- which was converted to a preliminary injunction on September 24, 1982 -- requiring defendant to surrender the documents to the Clerk of the Superior Court, placing the documents under seal, and permitting use of the documents only by attorneys of record for use in the pending case.

4. On November 24, 1982, plaintiff-appellant Mary Sue Hubbard filed a complaint in intervention against defendant alleging conversion and invasion of privacy, and seeking damages, return of the documents, and injunctive relief prohibiting further misuse of the documents.

5. On September 17, 1982, defendant filed a cross-complaint against plaintiff Church, but not against plaintiff Mary Sue Hubbard. The cross-complaint sought damages for alleged fraud, intentional infliction of emotional distress, libel, breach of contract, and tortious interference with contract.

6. On June 9, 1983, the Superior Court granted plaintiffs' motion to sever the complaints from the cross-complaint, on grounds of judicial economy.

7. The Superior Court proceeded to trial on plaintiffs' complaints in May, 1984. At the end of the six-week trial, the Court admitted into evidence and ordered unsealed -- over plaintiffs' strenuous objections on grounds of privacy,

relevancy, hearsay, and First Amendment religious privilege -- hundreds of the private and personal documents that defendant had misappropriated.

8. The Superior Court granted judgment to defendant. The Court ruled that plaintiffs established prima facie cases of invasion of privacy, breach of fiduciary duty, breach of confidence, and conversion. The court, however, denied the relief sought by plaintiffs on the basis of wholly novel application of the defenses of "justification" and unclean hands. The Superior Court ruled that defendant was "justified" in invading plaintiffs' privacy, property, and fiduciary rights, because defendant subjectively believed that he would need the misappropriated documents for future litigation with the Church, and that his wrongful possession and misuse of the documents would, in some unspecified way, protect him against unspecified future threats to his personal safety. The Superior Court therefore denied damages on the basis of the justification defense.

9. The Superior Court also ruled that plaintiffs were not entitled to the equitable remedies of immediate repossession of their property -- or to permanent injunctive relief against dissemination of the material -- on the grounds that plaintiffs had unclean hands.

10. Plaintiffs appealed from the trial court's judgment on the ground that, as a matter of law, defendant had no justification defense and therefore plaintiffs were entitled

to damages; that, as a matter of law, defendant established no unclean hands defense, and therefore plaintiffs were entitled to immediate return of their archival property; that, in ordering the unsealing of the private documents, the trial court defied legions of cases holding that courts could not, in such a perverse fashion, damage the very privacy interests sought to be protected by a privacy action; and that, in any event, a new trial was required because the trial court admitted and explicitly considered massive amounts of highly prejudicial and inadmissible evidence. On appeal, the parties filed extensive briefs -- totalling nearly 300 pages in length -- and full oral argument was held on September 18, 1986.

11. On December 11, 1986, pursuant to a partial settlement agreement, the trial court issued orders dismissing with prejudice respondent's cross-complaint, and ordering the return of all documents to appellants. See Exhibits A and B attached hereto. The partial settlement agreement did not settle appellants' underlying complaints for damages for intrusion upon privacy, conversion, and breach of fiduciary duty and confidence.

12. On December 18, 1986, the Court of Appeal dismissed appellants' appeal on the ground that the judgment appealed from was not an appealable final judgment. See Exhibit C. The Court of Appeal reasoned that, under the one-final-judgment rule, there would be no appealable final judgment until

judgment was rendered on respondent's cross-complaint. (The Court of Appeal did not mention the fact that respondent's cross-complaint had in fact already been dismissed.)

13. Appellants therefore filed a new notice of appeal (the instant appeal) on the basis of the trial court's December 11, 1986 order fully dismissing respondent's cross-complaint. (In order to protect themselves against the risk of loss of their right to appeal altogether, appellants also filed a petition in the California Supreme Court, seeking review of the Court of Appeal's dismissal of their initial appeal.)

14. Neither side, of course, appeals from so much of the final judgment as dismissed respondent's cross-complaint; that dismissal was ordered pursuant to the parties' partial settlement agreement.

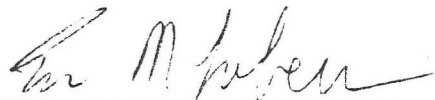
15. The only issues raised in the instant appeal are appellants' challenges to the trial court's denial of relief on appellants' complaints for damages. These issues have been fully briefed and argued before this Court in the prior appeal in case no. B005912. These issues were briefed at Points I, V and VI of Appellants' Brief; Points I, II, III, IV, VIII and IX of Respondent's Brief; and Points I, II, III, IV, and VIII of Appellants' Reply Brief, all filed in case no. B005912.

16. The trial court's orders of December 11, 1986 rendered moot all issues pertaining to appellants' claims for equitable relief and to the sealing of the documents in question. These now-moot issues were addressed in Points II,

III and IV of Appellants' Brief; Points V, VI and VII of Respondent's Brief; and Points V, VI, and VII of Appellants' Reply Brief.

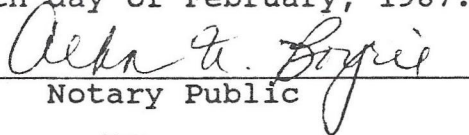
17. There is absolutely no reason for the parties to rebrief and reargue the issues raised in the instant appeal, which have all been fully presented to the Court already, as set forth in ¶ 15 above. The briefs on file with this Court total nearly 300 pages in length and fully address all outstanding issues. Rebriefing and reargument would be an enormous exercise in judicial waste. See, e.g., Gombos v. Ashe, 158 Cal.App.2d 517, 322 P.2d 933, 937-38 (1958) (rebrieffing of points addressed in briefs already on file is "unnecessarily dilatory and circuitous").

18. For the reasons set forth above, appellants respectfully request that this Court render decision on the merits of this appeal on the basis of the full briefing and argument already held in case no. B005912.



ERIC M. LIEBERMAN

Sworn to before me this
27th day of February, 1987.



Notary Public

ALBA N. BOYRIE
Notary Public, State of New York
No. 03-4672638
Qualified in Bronx County
Commission Expires March 30, 1987

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8 Attorneys for Plaintiff and Cross-Defendant
9 CHURCH OF SCIENTOLOGY OF CALIFORNIA

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

CHURCH OF SCIENTOLOGY OF
CALIFORNIA, a California
Corporation,

Plaintiff,

v.

GERALD ARMSTRONG, et al.,
Defendants.

Case No. C 420153

ORDER FOR RETURN OF
EXHIBITS AND SEALED
DOCUMENTS

AND RELATED CROSS-ACTION.

The Court having read and considered a stipulation for
return of sealed materials and exhibits between the parties and
their counsel;

IT IS ORDERED:

1. All documents, originals and copies, and other items
surrendered to the Court by Armstrong and his attorneys pursuant
to Judge Cole's orders of August 24, 1982 and September 4, 1982
and all documents and other items taken by Armstrong from
either the Church of Scientology or Omar Garrison shall be
released from the Superior Court and returned forthwith to

1 the Church of Scientology of California or its attorney of
2 record.

3 2. All documents and items entered into evidence or
4 marked for identification in Church of Scientology of
5 California v. Gerald Armstrong, Case No. C 420 153 shall be
6 released from the Superior Court and returned forthwith to the
7 Church of Scientology of California or its attorney of record.

8 3. All documents or items marked for identification or
9 entered into evidence and lodged with the Court of Appeal shall
10 be released and returned to the Church of Scientology of
11 California or its attorney of record forthwith upon their
12 return to the Superior Court from the Court of Appeal.

13 4. Notwithstanding the foregoing, the following exhibits
14 shall be exempted from the terms of this order pending a final
15 appellate decision in the litigation entitled United States
16 v. Zolin, Ninth Circuit Court of Appeals Nos. 85-6065,
17 85-6105: 500-CCCCC; 500-KKKKK; 500-LLLLL; 500-00000;
18 500-PPPPP; and 500-000000. In the event that the Zolin
19 litigation terminates with a judicial determination that the
20 United States of America is not entitled to obtain any of these
21 listed exhibits, then any such exhibits shall be returned
22 forthwith by the Clerk of this Court to the Church of
23 Scientology of California or its attorneys of record. In the
24 event that the government is found to be entitled to any of the
25 listed exhibits upon the conclusion of the Zolin litigation,
26 the Clerk of this Court shall provide the government with a
27 copy of such exhibit or exhibits and then immediately return
28 all remaining copies of the corresponding exhibits to the

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Church of Scientology of California or its attorneys of record.

DATED DEC 11 1988

PAUL G. BRECKENRIDGE, JUDGE

PAUL G. BRECKENRIDGE, JUDGE